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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 15184/2023

SH. OM PRAKASH .....Petitioner

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Kshitij Joshi and Mr. Aryan Kumar, Advs.

versus

COMMISSIONER OF POLICE .....Respondent

Through: Ms. Vidhi Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **24.10.2024**

C. HARI SHANKAR, J.

1. OA 1302/2023, preferred by the petitioner before the learned Central Administrative Tribunal, Principal Bench[1], stands dismissed by the impugned order dated 4 May 2023 on the ground of limitation.

2. Mr. Keshav Sehgal, learned Counsel for the petitioner, assails the impugned order, citing the decision of the Supreme Court in ***M.R. Gupta v Union of India.***[2]

3. Ms. Vidhi Gupta, learned Counsel for the respondent, seeks to distinguish the decision in ***M.R. Gupta*** on the ground that, in the

[1] "the learned Tribunal", hereinafter

present case, the grievance of the petitioner arose on the basis of an increment which according to him was not paid to him in time. As such, she submits that the petitioner ought to have approached the learned Tribunal within a year thereof, condonable by a maximum period of six months.

4. We have perused OA 1302/2023 filed by the petitioner before the learned Tribunal.

5. The petitioner joined the Delhi Police as a Constable on 8 March 1982. He was promoted as Head Constable with effect from 1 August 1995, as Assistant Sub-Inspector in January 2013 and Sub-Inspector in July 2019, from which post he superannuated on 31 January 2022.

6. The petitioner's case before the learned Tribunal was that the Central Civil Services (Revised Pay) Rules, 1997, entitled the petitioner to upgradation of his scale of pay, consequent on exercise of option by the petitioner in terms of Rule 6 of the said Rules. He contended that it was for the respondent to offer him the opportunity to exercise the said option and had he exercised the said option, he would have been entitled to his increment with effect from 1 January 1996, which would result in upward fixation of his pay scale. Predicated on this premise, the petitioner in his OA prayed as under:

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[2] **(1995) 5 SCC 628**

"…The Applicant prays that this Hon'ble Tribunal may be pleased to:

8.1. Call for the relevant file(s)/record(s) of the Respondent pertaining to the present case;

8.2. Direct the Respondent to re-fix the pay of the Applicant in accordance with the Central Civil Services (Revised Pay) Rules, 1997, published in the extraordinary gazette as G.S.R. 569(E) dated 30.09.1997 after granting one increment w.e.f. the date of the annual increment.;

8.3. Direct the Respondent to re-fix the pensionary and other connected benefits in accordance with the re-fixed basic pay;

8.4. Direct the Respondent to immediately release the arrears of Basic Pay, Pensionary Benefits and such other benefits, to which, the Applicant is entitled, after the fixation of the Basic Pay in accordance with the Central Civil Services (Revised Pay) Rules, 1997.

8.5. Award cost of the present proceedings to the Applicant;

8.6. Grant any such other and further relief as this Hon'ble Tribunal may deem fit and proper in facts and circumstance of the present case."

7. Though the case for re-fixation of pay, as urged by the petitioner, was based on the date from which he was entitled to be granted increment, the ultimate eventuate, if the petitioner's stand was to be accepted, would be upward revision of his pay scale. In effect, therefore, the petitioner was seeking upward revision of his pay scale from 1 January 1996.

8. Thus viewed, the case is squarely covered by the judgment of the Supreme Court in ***M.R. Gupta.***

9. ***M.R. Gupta*** was a case in which the learned Tribunal had been approached eleven years after the date with effect from which, according to the appellant in that case, his pay was wrongly fixed. The Supreme Court held that a plea of erroneous fixation of pay resulted in a recurring cause of action every month when the petitioner would be entitled to draw his salary. As such, it was held that the learned Tribunal had erred in rejecting the case of the appellant, M.R. Gupta on the ground of limitation. This principle was subsequently clarified in ***Union of India v Tarsem Singh***[3], which held that, though the claim – in that case, for pension – could not have been dismissed on the ground of delay, the arrears payable would only be for a period of three years prior to the filing of the writ petition before the Court.

10. Accordingly, keeping in mind the aforesaid decisions, the impugned order dated 4 May 2023 passed by the learned Tribunal in OA 1302/2023 is quashed and set aside.

11. Inasmuch as the learned Tribunal has not addressed itself to the merits of the petitioner's claim, keeping in mind the judgment of the Seven-Judge Bench of the Supreme Court in ***L. Chandra Kumar v Union of India***[4], which does not entitle this Court to examine the claim as a court of first instance, we deem it appropriate to remand OA 1302/2023 for consideration on merits afresh to the learned Tribunal. In case the petitioner's claim is found to be meritorious, the learned Tribunal would consider the aspect of the arrears to which the petitioner, if at all, would be entitled, keeping in mind the law that has

[3] **(2008) 8 SCC 648**
[4] **(1997) 3 SCC 261**

been laid down on the subject.

12. With the aforesaid observations, this writ petition is partly allowed.

13. Both parties are directed to appear before the learned Tribunal on 8 November 2024.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 24, 2024/j

Click here to check corrigendum, if any